

In The United States Court OF Appeals
For The Third Circuit

James W. Riley,
Plaintiff,

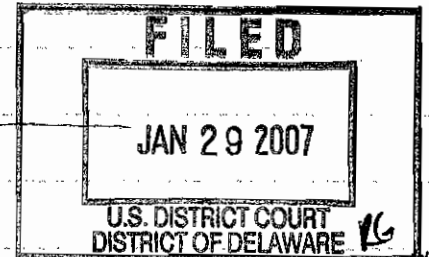
vs.

Stanley Taylor, et al.,
Defendants.

3d Cir. No. _____

(Dist. Ct. No. 06-01-GMS)

Petition To Remove Above Captioned
Civil Right Case Out Of The
Delaware District Court



To Clerk OF The Court:

Please Take Notice that due to A MATTER OF
imminent Life or death situation as explained in
previous Petition For Writ OF Mandamus In Re:
James Riley, 3d Cir. Ct. Case NO. 06-4004 AND in
the ATTACHED Letter To district court Judge
Gregory M. Sleet regarding the inadequate
medical care Estelle v. Gamble, 429 U.S. 97 (1976)
crisis in Delaware prisons, the petitioner James
Riley request THAT This Honorable Court Remove
this civil action case out OF The Delaware
District Court. The district court is directly
responsible For The health care crisis For
Failing to remedy years OF Estelle violations
in previous civil right cases Filed by Delaware

prisoners. The inaction of the district Court has resulted in the deaths of 89 prisoners from 2000 to 2005 and one recent death on January 10, 2007 at the hands of the incompetent medical staff. (See Prison health care articles at www.delawareonline.com.)

Petitioner have been denied medical treatment for serious medical complaints dating back to 4-years and despite petitioner's indepth prosecution of this case to the full extent of civil law (as the Court docket sheet will reflect), however the district Court has engaged in a process of unnecessary delay to deny justice and relief to ensure that petitioner receive adequate medical care. (See Three of Petitioner's pending motions filed in district Court Exhibits B, C & D attached hereto). These motions will give this Court an idea of how serious this situation is and why this Court must intervene to STOP the ongoing civil conspiracy between the district Court, Attorney General Office and Prison Officials to murder him and other Delaware prisoners by denying them adequate medical care.

Wherefore for reasons set forth in the letter attached January 19, 2007 to district Court Judge Gregory M. Sleet (Exhibit A) and reasons stated above herein this Court shall grant this Petition to Remove.

DATE: Jan. 20, 2007

James W. Riley
Del. Corr. Ctr.
1181 Paddock Road

From: James W. Riley
Delaware Correctional Center
1181 Paddock Road
Smyrna, Delaware 19977

To: Honorable Gregory M. Sleet
U. S. District Court Judge
Delaware District Court
844 N. King Street, Lockbox 19
Wilmington, Delaware 19801-3570

January 19, 2007

Re: Riley v. Taylor, et al.,
C.A. No. 06-01-GMS

Dear Judge Sleet,

This is to notify the Court that on the above date the medical staff gave plaintiff Riley a pair of eyeglasses stemming from the December 22, 2006 consultation with the optometrist, but the prescription in these eyeglasses were not accurate preventing the ability to see correctly through the lens. This is due in part for the two year delay to provide eyeglasses causing further optical nerve damage to eyes; the faulty lens; and the lack of proper examination by qualified ophthalmologist to diagnose the proximate cause of plaintiff's deteriorating eye sight.

This Court shall order the medical staff to turn over these faulty eyeglasses to the Court.

Exhibit A

AND grant plaintiff's January 5, 2007 Motion For Funds To Hire Medical Examiner. This independent Medical Examiner will conduct proper examinations on plaintiff's eyes and these faulty eyeglasses in the possession of the medical staff and report its findings directly to the Court in pursuant to Rule 35 (a) & (b) of the F.R.C.P.

The medical staff also indicated on the above date that they will not provide plaintiff with the orthopedic footwear or any treatment for the rectal dysfunction which is totally contrary to what defendants reported to the Court in their November 3, 2006 and November 13, 2006 letters.

Plaintiff don't know what else to do and at this point he feels that the Court is totally disrespecting him. Plaintiff feels there is a civil conspiracy between the Court, Attorney General Office and prison officials to murder him by denying him adequate medical care which may be fatal or cause permanent irreparable injuries.

These conspiracy allegations are true as reflected in News Journal Paper articles where from 2000 to July 2005 the medical staff murdered 89 inmates and just recently on January 10, 2007 the medical staff killed another inmate. (Read newspaper articles on prison health care at www.delaware-online.com).

One inmate that was murdered in 2004 (Darnell Anderson) was denied medical treatment for a preventable and treatable illness but since it wasn't diagnosed in time it was fatal. (See New Journal Paper Article in Wednesday paper January 17, 2007 Front page online .com.).

In spite of all this evidence the Court refuse to issue a permanent injunction on the defendants to provide plaintiff Riley medical treatment for the rectal dysfunction that was brought to their attention 4-years ago in 2002.

Because of plaintiff's allegation of civil conspiracy this Court shall relinquish jurisdiction over this matter and plaintiff's pending Habeas Corpus case # 04-1435-GMS.

This Letter will be forwarded to the Third Circuit Court of Appeals as a request to remove this civil action matter out of the Delaware District Court.

James W. Riley
Plaintiff

CC:

Clerk of 3d Cir. Court

Kevin J. Connors, Esq.

Ophelia M. Waters, Esq.

Cathleen S. Trainer (U.S. Dept. of Justice)

Carl Danberg (Attorney General of Delaware)

In The United States District Court
For The District Of Delaware

James W. Riley,
Plaintiff,

U.

Stanley Taylor, et al.,
Defendants

C. A. No. 06-01-GMS

Motion To Compel Ruling On Plaintiff's
Motion For Reconsideration Of The Court's
Decision Denying Plaintiff's Motion
For Preliminary Injunction And Temporary
Restaining Order

Dear Judge Sleet,

The defendants wrote two letters to the Court dated November 3, 2006 and November 13, 2006, advising the Court that they have taking adequate steps to provide plaintiff with the treatment ordered by physicians nearly two years ago to have his eyes examined by an optometrist and fulfillment of an prescription for orthopedics foot-wear. The letters also indicate that a Dr. Rodger will or had examine plaintiff on November 3, 2006, to resolve any remaining medical care issues; and that plaintiff was treated on November 10, 2006, at which time Snellen and Rosenbaum examinations were performed on his eyes.

Exhibit B

This is to inform the court that plaintiff have not been seen by doctor Rodgers or any other doctor. However, on November 10, 2006 (Hereafter 11/10/06) plaintiff was seen by a nurse who only performed a 2-minute eye examination which results are attached to defendants' November 13, 2006, Letter. (Note: These results contain both eye examinations from January 2005 and November 2006. The 2005 Snellen long distance test on plaintiff's right eye went from 20/200 to 20/400 in 2006. The only close-up Rosenbaum test conducted on plaintiff's left eye is actually 20/400 rather than 20/40 as erroneously noted on the 2006 examination report, because the nurse did not require plaintiff to cover the right eye when performing this close-up test.).

The court should also take notice that on the Physician's Order Sheet attached to defendants' 11/13/06 Letter (also attached hereto), in sections entitled: "Start New Orders Below", the impression is wrongfully given that Dr. Rodgers personally supervised the 11/10/06 eye examinations conducted by the nurse. Again, plaintiff never seen Dr. Rodgers or any other doctor in 2006!

Finally the defendants' stated in their 11/13/06 Letter "... prescriptions written prior to that time were by a prior medical provider under their policies"; and that..." It is NOT the policy of CMS to provide high top sneakers!"

This is direct evidence establishing CMS' liability for maintaining a policy and practice to deny prisoners adequate medical care. Thus as argued throughout

plaintiffs' summary judgment pleadings, because CMS assumed the original contract as medical provider for DOC from the First Correctional Medical Company (FCM) it replaced in 2005 then it was their duty to fulfill any prior prescriptions, orders, requests or unfinished medical treatment by doctors contracted by FCM. Nor is it reasonable for CMS to state that it is not their policy to provide high top sneakers which were prescribed by physicians for medical reasons. Such a policy and practice is direct evidence CMS does not provide adequate orthopedic foot care and have denied plaintiff access to orthopedic treatment prescribed by doctors over a period of three years.

Continued Pain, Suffering, Irreparable Harm And Injuries

The defendants have demonstrated a willful persistent and blatant disregard for plaintiff's serious medical needs which continue to result in constant pain & suffering and irreparable harm & injuries. Defendants continue to be deliberate indifference for failure to 1) provide treatment for a painful rectum dysfunction which now resulted in hemorrhage; 2) provide treatment for a re-occurring skin infection caused possibly by exposure to necrotizing fasciitis bacteria resulting in continued facial skin and tissue damage & scarring; 3) provide orthopedic footwear (both sneakers & boots) prescribed by doctors to prevent pain and harm to surgical pins

in ankle ; and 4) carry out physicians' orders to allow plaintiff to consult an optometrist for impair eye vision which continue to result in pain, suffering and irreparable optical nerve damage and declining impair eye sight.

This court without further delay must grant this motion for reconsideration to issue a preliminary injunction on the defendants directing them, their agents and custodians having charge over plaintiff, to provide plaintiff medical treatment, immediately, and to impose judicial sanctions against them for each day for failing to comply therewith.

James W. Riley
James W. Riley
Plaintiff

① Date: December 13, 2006

CONSULTATION REQUEST

☒ Off-site ☒ On-Site Clinic ☐ Telemedicine
☐ Urgent ☒ Routine ☐ Retro Request
 Inmate: Allen, James Inmate ID#: 169716
 Site: DC MTH Cost Center: _____
 3rd Party Insurance: (VA, Workmen's Comp, Federal, Interstate Compact, etc.): _____

Reference #: _____
 Date of Request: 11.10.06
 DOB: 8.19.60
 DOI: _____ EDR: _____

For security reasons, inmates must NOT be informed of date, time or location of proposed treatment or possible hospitalization. Authorize payment is provided ONLY for requested procedures or treatments of life-threatening conditions. Prior review/discussion with Medical Director required for additional treatment, procedures and hospitalizations.

Procedure/Test/Specialty Service Requested: Optometrist
 Provider: _____ Initial Visit or F/U? _____ R/U#: _____

Presumed Diagnosis: ↓ visual acuity

Describe Signs & Symptoms: _____ Date of Onset: _____
Asked to write consult from a grievance hearing. pt. do blurred vision and ↓ visual acuity

Exam Data/Objective Findings:
Snellen (R) 20/400 (L) 20/20
Rosenbaum (R) 20/30 (L) 20/40

Lab & Xray Data: _____

Current Medications: Ø

Failed Outpatient Therapies: _____

Enrolled in Chronic Care Clinic (s)? ☐ Yes ☒ No Which Clinic(s)? _____

Other Diagnosis: _____

Comments: _____

Site Medical Provider: Dr. Kodgers Signature: [Signature] Date: 11/10/06

Nurse: _____ Date: _____ Site Medical Director: _____ Date: _____

Criteria Source: ☐ M&R ☐ InterQual

☐ Other(specify): _____

Criteria Met: ☐ Criteria Not Met: ☐ More Info Needed ☐

UM Review if: _____

Initials: _____ Date: _____

Note: Notify physician or midlevel practitioner immediately if unable to obtain appointment within 4 weeks. If service is not completed within 4 weeks, have patient re-evaluated by physician or midlevel practitioner to determine if service is still necessary and appropriate.

PHYSICIAN'S ORDER SHEET

START ① HIGH TOP BOOTS - non-form filled out
 ② CMP
 ③ OPTH consult - ② eye 20/200
 (eye doctor) ④ eye 20/30

Noted
 1/24/06
 2:00p

START NEW ORDERS BELOW

START
 ✓ Shellen
 ✓ Ruxenbaum } today
 please
 consult written for high top
 sneakers (from grandance)

Return
 1/24/06
 09:00

START NEW ORDERS BELOW

START
 optho consult - done
 Faxed 1/23/06
 11am

NAME Riley, Jeno
 ALLERGIES N/A
 ID 169716
 DOB 8.14.60

In The United States District Court
For The District Of Delaware

James W. Riley,
Plaintiff,

v.

Stanley Taylor, et al.,
Defendants

C. A. No. 06-01-GMS

Notice Of Motion

Dear Judge Sleet,

Please Take Notice that the attached motion For Funds to Hire Medical Examiner and Expert Witness shall be considered at the earliest time most convenient to the Court.

This is also to notify the Court that the defendants still have not provided plaintiff Riley with the orthopedic footwear (both boots & sneakers) or resolved the remaining medical issues (i.e., treatment for the rectal dysfunction) as indicated in their November 3, 2006, letter to Your Honor. And although the defendants finally allowed plaintiff to see the optometrist who fitted him for a pair of eyeglasses on December 22, 2006, which yet have to be provided, however plaintiff never got to have his eyes examined by the ophthalmologist as ordered by the doctor. Are optometrist and ophthalmologist one of the same profession?

Date: Jan. 5, 2007

James W. Riley
Plaintiff

Exhibit C

In The United States District Court
For The District Of Delaware

James W. Riley,
Plaintiff,

v.

Stanley Taylor, et al.,
Defendants

C.A. No. 06-01-GMS

Motion For Funds To Hire
Medical Examiner And
Expert Witness For Trial

Now Comes plaintiff James W. Riley pursuant to Rule 35 of the F.R.C.P who request that this Court grant Funds to hire qualified physicians to conduct independent medical examinations on plaintiff's eyes, Feet, rectum and exposure to necrotizing Fasciitis bacteria infection. In support of this request plaintiff set forth the following Facts:

1. The medical staff defendants (CMS/FCM) are being sued by plaintiff for denying him adequate medical treatment by qualified medical staff or no treatment at all for the serious medical needs cited above. Any medical examinations conducted on plaintiff by the medical defendants' doctors, physicians, practitioners or nursing staff were unreliable and unfairly

Favorable to Cms/Fcm and the Delaware Correctional Center (DCC) defendants who contracted Cms/Fcm to meet the medical needs of the prisoners.

2. On December 22, 2006, (After nearly two whole years) the defendants finally allowed plaintiff to consult with their optometrist to have his eyes examined and to be fitted for a pair of glasses stemming from a 2005 doctor's order and referral to an ophthalmologist. However other than examining plaintiff's eyes for prescription glasses which took less than 5-minutes, no further examinations were conducted by qualified ophthalmologist (as ordered by the doctor) to diagnose the cause of plaintiff's deteriorating eye sight.

3. No medical examinations were ever conducted by Cms/Fcm to determine the cause of plaintiff's rectum dysfunction that was brought to the medical defendants attention over four (4) years ago. Plaintiff speculated that the problem could be hemorrhoids due to years of heavy weight lifting. To this date (and after this Court placed them on notice by denial of summary dismissal of this medical issue), the defendants still have not taken adequate steps to have plaintiff examined by qualified doctors to make proper diagnosis and prescribe adequate treatment for plaintiff's rectum dysfunction.

Thus an independent medical examiner is therefore required to establish defendants liability for failing to diagnose and treat this serious medical condition which is resulting in continued prolonged pain and suffering. The independent medical examiner will conduct, among other

things, A Rectal Exam (D&E) screens For hemorrhoids, lower rectal problems, colon and prostate cancer, tumor growth, etc.

4. Also the defendants never tested and treated plaintiff For exposure to Necrotizing Fasciitis bacteria infection. Since the CMS/FCM delegated the responsibility to treat plaintiff For this highly contagious Flesh eating bacteria to unqualified nursing staff who does not specialize in dermatology or other skin disease diagnostic qualifications, thus plaintiff need to hire an independent medical examiner to perform the proper tests and diagnosis to establish defendants' liability For this medical claim.

5. Finally plaintiff need to hire an independent medical examiner to examine the extent of his ankle injury and to provide expert testimony of the need For orthopedics Footwear.

Because the medical staff defendants (CMS) has admitted that it is not their policy to provide orthopedics Footwear (in this case boots & sneakers), then plaintiff will use the independent medical Examiner to substantiate that Orthopedics: "is the branch of medicine dealing with the correction of diseased, deformed, or injured bones or muscles"; and which also include Orthotics: "The branch that treats joint or muscle disorders using mechanical supports, braces, etc, or devices, as inserts For athletic shoes, that provide such support". Such expert testimony will help plaintiff establish that defendants are deliberate indifferent to his medical need For orthopedics Footwear prescribed by doctors dating back to 1995 and that defendants' admitted policy not to provide such orthopedice

Footwear violate plaintiff's 8th Amendment right to reasonable medical treatment.

Wherefore plaintiff need Funds to hire 1) An Ophthalmologist to examine his eyes; 2) A Doctor specialized in rectal dysfunctions to examine his rectum; 3) A Dermatologist to test for exposure to necrotizing Fasciitis infection; and 4) An Orthopedist to examine his foot injury. Additional Funds shall be included for any and all expert testimony that these physicians may be required to provide in the prosecution of this case at any future trial by jury. See F.R.E Rule 706.

James W. Riley

James W. Riley, pro se

Delaware Correctional Center

1181 Paddock Road

Smyrna, Delaware 19977

Date: January 5, 2007

C.A. No. 06-001-GMS

From: James W. Riley
Delaware Correctional Center
1181 Paddock Road
Smyrna, Delaware 19977

To: The Honorable Gregory M. Sleet
United States District Court Judge
844 North King Street, Lockbox 19
Wilmington, Delaware 19801-3570

January 10, 2007

Re: The Illegality OF Settlement Agreement Entered
Between The U.S. Department OF Justice And Defendant
Stanley Taylor; Agreement Do Not Exempt Defendant
Taylor From Liability; And Court Shall Direct
Defendants To Provide Plaintiff With Copy OF
Entire Settlement Agreement

Dear Judge Sleet,

On December 29, 2006, the United States Department
of Justice (DOJ) investigators released the finding
of their nine-month investigation into prison health
care in which they found substantial civil rights
violations similar to the inadequate health care claims
alleged in plaintiff Riley's complaint. In a 87-page
settlement agreement reached by defendant Stanley
Taylor and the Attorney General Office representing
defendants in this civil right action before this
Court, they agreed with the Federal investigators to
correct the inadequate deficiencies in the prison

(2) Exhibit D

health care system and to meet generally accepted professional health care standards. According to the News Journal Paper article accounts, the settlement agreement requires the Department of Corrections (DOC) to make the changes or risk being sued by the Special Litigation Section of Justice Department's Civil Rights Division. The settlement also exempt the DOC of admission and liability for violating inmate's civil rights or breaking any other Federal Law.

Plaintiff Riley contend that the U.S. DOJ investigators were acting on behalf of all prisoners currently confined under Delaware DOC; and the settlement agreement was made pursuant to the Prison Litigation Reform Act (PLRA) of 1995 as codified in 18 U.S.C. § 3626 of DOJ's representation of prisoners, agreeing to stipulated 3-year term for enforcement of settlement by injunction to correct inadequate health care 8th Amendment violations.

However, DOJ have no legal authority to exempt the DOC from liability for the 8th Amendment violations it found in the prison's health care system without first resolving all the pending medical complaints, grievances, lawsuits, etc., filed by numerous prisoners against prison officials and medical staff prior to commencement of the Federal investigation - Plaintiff Riley have not consented to DOJ's actions and have not waived DOC's liability for health care violations disclosed in the settlement agreement.

For instance, the prison official-defendants in this case at bar involving plaintiff Riley, (the same named party

to the settlement agreement), the defendant Stanley Taylor and their attorney (The Attorney General Office headed by Carl Danberg), refuse to provide Riley any medical treatment for several health care problems that existed for over a period of 4-years (beginning in 2002) and despite district court orders to provide medical treatment and denial of summary judgment holding defendants liable for failing to treat Riley's serious medical needs, inexplicably these defendants still refuse to provide any medical treatment. See Riley v. Taylor, et al., Del. Dist. Ct., C. A. No. 06-001-GMS.

Thus the current settlement agreement which require DOC to correct and refrain from their unconstitutional policy of inadequate medical care is totally contradictory to the DOC's ongoing active and willful persistent health care violations in pending lawsuit cases like plaintiff FF Riley and in the thousands of pending administrative medical grievances and complaints filed by inmates throughout the DOC.

Until all prior pending court cases and administrative complaints filed by prisoners regarding inadequate medical care and denial of medical treatment are fully and fairly resolved, this Court cannot accept the settlement agreement between the U. S DOJ and defendant Taylor which exempt DOC from liability for the admitted health care violations in the body of the agreement.

Thus, since defendant Taylor signed the settlement agreement identifying the existence of 8th Amendment medical violations throughout all prisons of the DOC

in which he agreed to correct over a three (3) year period through Legislature prison health care reForm, this Court must view the Agreement AS AN Admission by defendant Taylor.

Wherefore, in light OF the Admission OF health care violations by defendant Taylor this Court must reconsider its previous December 5, 2006, Memorandum AND Order denying plaintiff's motion For summary judgment. Thus the Court shall direct defendant Taylor's Counsel (The ATTorney General OFFice) to provide the Court AND plaintiff Riley with A complete copy OF the Sittlement Agreement within 30-days From receipt OF order From this Court. AN Appropriate ORDER shall be entered granting summary judgment AND relief in Favor OF plaintiff Riley ON All claims OF denial OF medical treatment by All defendants named herein.

Thank You!
James W. Riley
Plaintiff

CC:

Cathleen S. Trainor (U.S Dept. OF Justice)

Carl Danberg (ATTorney General OF STATE OF Dela.)

Kevin J. Connors, Esq. (ATT. For medical deFts.)

Ophelia M. Waters, Esq. (DAG ATT. For prison OFFicials)

Certificate of Service

I, James Riley, hereby certify that I have served a true and correct cop(ies) of the attached: PETITION TO REMOVE
AND EXHIBITS upon the following parties/person (s):

TO: OFFICE OF THE CLERK
U. S. COURTS OF APPEALS
FOR THE THIRD CIRCUIT
21400 U. S. COURTHOUSE
601 MARKET STREET
PHILA., PA., 19106-1790

TO: OFFICE OF THE CLERK
DELAWARE DISTRICT COURT
844 KING STREET
WILMINGTON, DELAWARE
19801

TO: KEVIN J. CONNORS, ESQ.
1220 N. MARKET ST., 5TH FL.
P. O. BOX 8888
WILMINGTON, DEL. 19899-8888
(ATT. FOR MEDICAL DEFENDANTS)

TO: OPHELIA M. WATERS, ESQ.
DEPUTY ATTORNEY GENERAL
820 NORTH FRENCH ST.
WILMINGTON, DELA. 19801
(ATT. FOR PRISON OFFICIALS)

BY PLACING SAME IN A SEALED ENVELOPE and depositing same in the United States Mail at the Delaware Correctional Center, 1181 Paddock Road, Smyrna, DE 19977.

On this 23 day of JANUARY, 2007

James Riley